

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

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| IN THE MATTER OF: CITY OF TORONTO NPDES Permit #2383001 | ADMINISTRATIVE CONSENT ORDER NO. 2014-WW-06 |
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TO: City of Toronto
City Clerk
300 Mill St.
Toronto, IA 52777

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Toronto (Toronto) and the Iowa Department of Natural Resources (DNR) for the purpose of establishing a schedule through which the Toronto can correct and prevent violations of NPDES Permit #2383001 and the Iowa statutes and regulations related to wastewater treatment and disposal.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jim Kacer, Environmental Specialist
DNR Field Office #6
1023 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-281-8889

II. JURISDICTION

This Amendment is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (waste water) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Toronto owns and operates a wastewater treatment system pursuant to NPDES Permit #2383001. The wastewater treatment system consists of three 5,000-gallon septic tanks, a 3,000-gallon dosing tank, and two 5,525 ft² subsurface sand filters. The treatment units are located on a parcel owned by Toronto on Spring Street in the northeast corner of town. Three lift stations are used to serve the wastewater collection system.

2. On July 8, 2010 the DNR received a complaint stating that the main lift station in Toronto wastewater collection system, located on North Mill Street, was bypassing into a pasture. The DNR investigated on July 14, 2010 and confirmed that the main lift station in the system had bypassed due to pump problems. Toronto had failed to report the bypass as required. During the investigation, City Clerk Janet Burke acknowledged these violations and the final effluent limit violations for carbonaceous biochemical oxygen demand (CBOD), Total Suspended Solids (TSS) and Escherichia coli (E.coli) bacteria which had occurred in April and May of 2010. Upon inspection it was observed that the final effluent coming from the sand filter treatment system was a dark purple/black in color which should not occur with such a system.

3. On July 14, 2010, the DNR issued a Notice of Violation to Toronto based upon the inspection which occurred on that date. The Notice of Violation directed the city to hire an Iowa-licensed engineer to conduct an evaluation of the city's wastewater collection and treatment systems.

4. On August 31, 2010, Toronto submitted a report prepared by IIW Engineers & Surveyors, P.C. The report noted numerous repairs and maintenance procedures which were needed in the wastewater collection system and the septic tanks. The report further indicated that a portable pump which was intended for use as a back-up for Toronto was located in another town and needed to be returned.

5. On October 28, 2010, the DNR received a complaint that the North Mill Street lift station in Toronto was bypassing to a road ditch and a pasture. During the telephone complaint, the phone was handed to a city employee who confirmed that the bypass was occurring due to pump failures. It was further acknowledged that the portable pump had not yet been returned. One of the pumps was repaired within a few hours of the complaint and the discharge ceased.

6. On March 14, 2011, the DNR received a complaint that the North Mill Street lift station was once again bypassing into the road ditch and adjacent pasture. The bypass was confirmed upon inspection by DNR personnel.

7. On March 23, 2011, the DNR conducted a routine inspection of the wastewater collection and treatment system of Toronto. The inspection noted effluent violations in 2010 related to CBOD and E.coli. Grab samples of effluent taken during the inspection exceeded the limits for CBOD, TSS, and E.coli. Violations were found in regard to sampling

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methodology and maintenance. It was noted that the City of Toronto had not yet fully implemented the recommendations contained in the August 2010 engineering report. A Notice of Violation and inspection report were issued to Toronto on April 6, 2011.

8. On March 24, 2011, Kent Hoffman reported a fish kill in the oxbow lake into which Toronto's sand filter discharges. The lake is on the property of Mr. Hoffman.

9. On April 4, 2011, Toronto submitted to the DNR a report prepared by IIW, P.C. The report noted the failure to undertake recommendations from the August 2010 report and recommended additional maintenance and repairs to Toronto wastewater collection and treatment systems. Significant maintenance problems in regard to the septic tanks and sand filter system were found to exist. These problems were causing the failure of the system and the violation of effluent discharge limitations.

10. On May 17, 2011, the DNR visited Toronto to observe repair work underway on the wastewater collection and treatment system.

11. On May 25, 2011, Toronto submitted information in regard to ongoing repairs of the sand filter treatment systems, septic tank cleaning schedule, dosing siphon repairs, lift station maintenance and repairs, chlorination/dechlorination repairs, and monitoring improvements.

12. On June 27, 2011, the DNR collected samples of the final effluent discharging from Toronto wastewater treatment system. The samples revealed a violation of the City's effluent limitation for E.coli. A Notice of Violation was issued on July 12, 2011. The Notice requested an update on the status of repairs be submitted by August 1, 2011. No such update was provided.

13. On September 11, 2011, Toronto notified the DNR that the chlorination system was not yet operational due to the unavailability of chlorination tablets.

14. On September 12, 2011, the DNR sent a letter to the City renewing the request for an update on the status of repairs and the acquisition of necessary equipment. Additionally, in light of the resignation of the City's wastewater operator, the DNR requested the name of the new wastewater operator. This update was to be completed by October 1, 2011.

15. On October 3, 2011, the City notified the DNR that the chlorination/dechlorination system would be operational by October 7, 2011.

16. On November 1, 2011, the DNR conducted a site visit at Toronto wastewater collection and treatment system. A grab sample of the final effluent was collected at that time. The sample results indicated a violation of the effluent limitations for E.coli. The chlorinator/dechlorinator was not yet operational. At the time of inspection, Toronto had not had a certified wastewater treatment operator since July. The monthly operating reports had not been submitted since the June 2011 report. The City had not yet purchased a 24-hour

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composite sampler as is required by the permit. A Notice of Violation was issued on November 17, 2011.

17. On February 27, 2012 the DNR sent Toronto a Notice of Violation due to continuing violations of the NPDES permit. Ongoing violations included the failure to retain a certified operator, failure to submit monthly operating reports, failure to disinfect, and failure to conduct required monitoring,

18. On April 2, 2012, the DNR received a Water and Wastewater Operator Certification Program Affidavit from Toronto designating Matthias (Matt) Cavey as the City's Grade II wastewater treatment operator.

19. On April 19, 2012, DNR Environmental Specialist Senior Jim Sievers contacted Matt Cavey to inform him of the compliance issues with the City of Toronto's wastewater collection and treatment system. Mr. Cavey was informed of the E.coli effluent violations, the need to get the disinfection system operational, the requirement of a 24-hour composite sampler, and the monthly operating report deficiencies. Mr. Sievers emailed Mr. Cavey a copy of the Toronto NPDES permit and had the electronic monthly operating reports form emailed to Mr. Cavey as well.

20. On April 5, 2013, the DNR received a complaint that effluent was being discharged from the Toronto sand filter and running onto a neighboring property.

21. On April 10, 2013, Environmental Specialist Jim Kacer conducted an inspection of the Toronto wastewater collection and treatment system. Mr. Kacer noted continuing violations of monitoring requirements. No monthly operating reports had been received by the DNR since March 2012. The monitoring which had occurred from March 2011 to March 2012 was incomplete but showed violations in regard to CBOD, TSS, and E.coli. The discharge monitoring reports indicated a failure to monitor in the frequency or manner required by the permit. The collection system, including the lift stations, was operating normally at the time of inspection and bypasses had not been occurring. The primary issue of concern was seepage around the sand filter. The ground surface on the western section of the filter systems was saturated and seepage was draining onto a neighboring property.

21. On May 6, 2013, the DNR issued a Notice of Violation to Toronto. The Notice cited violations related to permit effluent limitations, failure to file monthly operating reports, and failure to maintain the treatment plant.

22. On June 13, 2013, Toronto submitted partial effluent sampling results from a sample collected on May 15, 2013. The results disclosed violations of permit effluent limitations in regard to CBOD and E.coli. The E.coli sample result was 2,420,000 MPN/100 ml compared to a permit limit of 278 MPN/100 ml for a 30-day average.

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23. On June 25, 2013, the DNR issued a Notice of Violation to Toronto for violations related to permit effluent limitations, failure to file monthly operating reports, and failure to maintain the treatment plant.

24. Toronto was required to submit an application for renewal of NPDES Permit #2383001 by October 14, 2013. The application was not filed by the due date.

25. On January 14, 2014, Toronto filed an application for renewal of the NPDES permit.

26. On January 29, 2014, the DNR contacted Matt Cavey in regard to the continuing noncompliance of the Toronto wastewater collection and treatment system. Mr. Cavey indicated that he was no longer the certified operator for Toronto.

27. On January 30, 2014, the DNR notified Matt Cavey that a certified operator is required by law to notify the DNR at least 30-days prior to the termination of an operator affidavit agreement. Mr. Cavey acknowledged that he had not notified the DNR.

28. On February 3, 2014, the DNR contacted Toronto Mayor Amber Hayes. Ms. Hayes indicated that Matt Cavey was still the operator for Toronto's wastewater collection and treatment system. When informed of Mr. Cavey's indication that he was no longer the operator, Mayor Hayes stated that a new operator would be hired.

29. On February 18, 2014, Mr. Kacer contacted Cindy Linnabery, the non-certified operator for the Toronto system. Ms. Linnabery indicated that she had been sending wastewater sampling data to Mr. Cavey for submission to the DNR. Ms. Linnabery also indicated that Toronto had hired IIW to evaluate the current condition of the wastewater system. She indicated that the initial finding of IIW was that the sand filters were plugged and in need of rehabilitation.

30. On April 12, 2014, NPDES permit #2383001 expired. All discharges from the Toronto wastewater treatment system after that date constitute the unauthorized discharge of pollutants without a permit in violation of state and federal law until such time as the permit is renewed. This administrative order is necessary to authorize the continuing operation of the wastewater treatment system to serve Toronto until the permit can be renewed.

IV. CONCLUSIONS OF LAW

The DNR and Toronto agree that the following conclusions of law are applicable in this case:

1. Pursuant to Iowa Code section 455B.186(1), a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. Beginning April

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12, 2014 and continuing to the date of reissuance of NPDES Permit #2383001, Toronto is violating this statute.

2. 567 IAC 64.7(7)(f) states that each issued NPDES permit shall provide for and ensure that the permittee at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit. The above-mentioned facts indicate noncompliance with this provision.

3. Pursuant to 567 IAC 64.3(1), no person shall operate any wastewater disposal system or part thereof contrary to any condition of an operation permit issued by the Director of the DNR. NPDES Permit #2383001 establishes effluent limitations for the discharge of pollutants from the Toronto wastewater treatment system including limits for CBOD, TSS and E.coli. Toronto has violated these effluent limitations on numerous occasions.

4. Pursuant to 567 IAC 63.3, 63.8 ad 63.9 and NPDES Permit #2383001, a permit holder shall submit monthly operational reports containing all monitoring information required by the permit. Toronto has failed to submit the required reports and has violated the required deadlines for reports that were filed.

5. Pursuant to 567 IAC 63.6 and NPDES Permit #2383001, a permit holder shall notify the DNR of the occurrence of a bypass as soon as possible but not later than 12 hours after the onset or discovery. Toronto has violated this provision on multiple occasions.

6. Pursuant to 567 IAC 60.4(2) "a", an application for renewal of an NPDES permit is due 180 days prior to expiration of the current permit. Pursuant to Iowa Code section 17A.18(2), when an applicant has made timely and sufficient application for renewal of a permit, the permit remains valid until there is final agency action on the application. Toronto did not make timely application for renewal of NPDES Permit #2383001 and the permit expired on April 12, 2014. Each day of continued discharge constitutes a violation of Iowa Code section 455B.186 for the discharge of a pollutant without a permit.

7. Pursuant to Iowa Code section 455.223, it is unlawful for a governmental subdivision to operate a waste water treatment plant without a competent operator certified by the Director of the DNR. IAC Chapter 567-81 establishes operator certification requirements. Toronto has violated these provisions.

V. ORDER

THEREFORE, the DNR orders and Toronto agrees to the following schedule of compliance:

1. Toronto shall comply with the provisions of expired NPSES Permit #2383001 until such time as a new or renewed permit is issued. From the date of execution of this Order until such time as a new or renewed permit is issued to Toronto, discharge from the Toronto

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wastewater treatment system is hereby authorized in compliance with the terms of the expired permit.

2. Within 30 days of the execution of this Order, Toronto shall submit a compliance maintenance plan outlining the method by which Toronto will ensure ongoing compliance with all permit requirements, specifically including the following:

- a. Timely submission of all reports;
- b. The collection and analysis of composite samples for CBOD and TSS;
- c. The analysis of pH samples immediately after sample collection;
- d. The use of approved methods for sample analysis.

Nothing in this paragraph is or shall be interpreted to be a waiver of immediate compliance with all NPDES permit requirements. The compliance plan described herein shall be designed to maintain ongoing future compliance and is not a schedule to achieve compliance. Compliance with all permit conditions is an ongoing requirement.

3. By August 1, 2014, Toronto shall rehabilitate its wastewater treatment and collection system such that all facilities and equipment are operating as designed and intended and are capable of complying with all effluent limitations and monitoring requirements.

4. Within 30 days of the execution of this Order, Toronto shall pay a fine in the amount of \$5,000.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – Toronto has achieved an economic benefit by failing to maintain, repair and operate its wastewater collection and treatment system. Avoided equipment costs include the costs of a composite sampler (Greater than \$1,400) and a field pH meter ((greater than \$100). Additional service costs avoided include costs of engineering, maintenance and repair. It is expected that the total economic benefit to Toronto arising from noncompliance exceeds \$5,000. In order to resolve this matter consensually, a penalty of only \$2,000 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Each day of violation may result in a penalty of up to \$5,000. There are multiple days of violation

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documented. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. In this case, Toronto has discharged raw or partially-treated wastewater to private property and to waters of the state. Toronto has violated multiple provisions related to monitoring, reporting, operation, maintenance, and effluent limitations. All programmatic aspects have been violated over multiple days of violation. In order to resolve this matter consensually, a penalty of only \$1,000 is assessed for this factor.

Culpability – Toronto has repeatedly violated the terms of the NPDES permit. Toronto has been aware of the need to repair and maintain its wastewater collection and treatment systems since at least 2010. Despite this knowledge, the same problems have repeatedly arisen due to the failure to properly maintain and operate the wastewater system. Toronto failed to file a timely application for permit renewal and failed to submit required reports. The failure to take required and appropriate actions indicate a willful disregard for the law. For these reasons, a penalty of \$2,000 is assessed for this factor.

Mitigating Factors - Toronto is a city of only approximately 123 individuals. The total annual budget for Toronto, as of July 1, 2013 was \$84,494 of which \$26,032 was collected as sewer fees. The penalty in this Order has been limited to \$5,000 in light of these budgetary constraints and the need to undertake additional capital expenditures to comply with this Order.


VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Toronto. For that reason, Toronto waives the right to appeal this Order or any part thereof.

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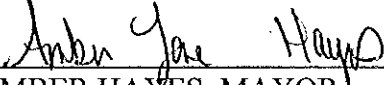
VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with section V. Order, paragraphs 1 through 4, of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to issue a new administrative order with an administrative penalty or to seek referral to the Attorney General in lieu of collecting the agreed upon stipulated penalties established by this Order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 5th day of
June, 2014



AMBER HAYES, MAYOR
City of Toronto

Dated this 18 day of
May, 2014

NPDES #2383001; Field Office #6; Jon Tack; EPA; I.B.2(a), (b) & (c); I.C.1

